

**Functional Series 100: Agency Organization and Legal Affairs**  
**Chapter 104: Performance of Commercial Activities within USAID**

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## **104 Performance of Commercial Activities within USAID**

### **104.1 Authority**

1. Office of Management and Budget (OMB) Circular A-76 (Revised Supplemental Handbook) "Performance of Commercial Activities," March 1996 (hereafter referred to as Circular A-76).

2. OMB Policy Letter 92-1, **"Inherently Governmental Functions,"** September 23, 1992.

\* **3. Federal Activities Inventories Act of 1998, Public Law 105-270, October 19, 1998 (hereafter referred to as the FAIR Act).**

### **104.2 Objective**

To summarize policies for determining whether commercial activities shall be performed under contract by a commercial source or internally using government resources.

### **104.3 Responsibility**

1. Assistant Administrator for Management (**AA/M**)

Ensures that Circular A-76 and its supplement are properly implemented within the Agency.

2. **Bureau for Management, Office of Human Resources, Policy, Planning, and Information Management Division (M/HR/PPIM)**

**Coordinates** Agency implementation of Circular A-76 and advises Agency personnel regarding its provisions.

3. Heads of Bureaus, Offices, and Overseas Organizations (**See also [ADS Chapter 103](#)**)

**Implement** Circular A-76 provisions within their areas of responsibility; identify in-house functions for review; assess the application of Circular A-76 when considering an organization change.

4. **Bureau for Management, Office of Procurement (M/OP)**

**Participates** in cost comparison reviews by serving as the liaison between USAID and the private sector for determining the cost of performing a function under contract.

## **5. Bureau for Management, Office of Human Resources, Personnel Operations Division (M/HR/POD)**

Assesses the impact of Circular A-76 provisions on Agency employees; identifies appropriate reassignments for employees adversely affected.

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## **6. Administrative Management Services (AMS) Officers**

**Provide M/HR/PPIM with information regarding commercial activities performed by USAID employees for the annual A-76 inventory required by OMB.**

### **104.4 Definitions (See Glossary [Word](#) | [PDF](#) | [HTML](#))**

commercial activity  
inherently governmental function

### **104.5 POLICY**

The **statements contained within the .5 section of this ADS chapter are** the official Agency policies and corresponding essential procedures.

#### **104.5.1 PROVISIONS OF CIRCULAR A-76 (See also Mandatory References [OMB Circular A-76](#) and [OMB Policy Letter 92-1](#))**

The following guidelines are provided by Circular A-76 regarding the A-76 cost comparison process:

a) Competition enhances quality, economy and productivity. Whenever private sector performance of a Government-operated **commercial activity** is permissible, a cost comparison shall be performed.

b) Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees. These functions are not in competition with the private sector; therefore, they shall be performed by U.S. Government employees.

c) USAID shall utilize commercially available sources to provide commercial products and services. The Agency shall not begin or carry out an activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

\*

**d) USAID shall maintain an inventory of commercial activities in accordance with the provisions of Circular A-76.**

## **E104.5.1 Provisions of Circular A-76**

- \* **M/HR/PPIM shall maintain the database identifying all commercial activities performed in the Agency. On an annual basis, M/HR/PPIM shall report this information to the Office of Management and Budget (OMB) in accordance with the FAIR Act. AMS officers shall provide M/HR/PPIM with updated inventories annually upon request.**

When a commercial activity is identified for review, the following functions shall be performed:

- a) Management Study: conducted to identify essential functions to be performed and to determine the optimal organization structure, staffing, and operating procedures for efficient and effective operation. Part III of the Supplement to Circular A-76, "Management Study Guide," provides detailed guidance for conducting the management study.
- b) Performance Work Statement (PWS): describes the acceptable quality levels and output required by the Government. The PWS provides a baseline for comparing the cost of performing a function in-house and through the private sector. Detailed guidance on the development of the PWS is provided in Part II of the Circular A-76 Supplement, "Writing and Administering Performance Work Statements."
- c) Cost Comparison: determines the cost to the Government of acquiring a service by contract and of providing the service with in-house Government resources. Functions involving 10 or fewer full time equivalencies (FTEs) may be converted to contract without conducting a cost comparison if fair and reasonable prices can be obtained from qualified commercial sources. Activities exceeding 10 FTEs must undergo cost comparisons. Commercial activities exceeding 10 FTEs shall not be modified, reorganized, divided or in any way changed for the purpose of circumventing cost comparison requirements. If effective price competition is available and an in-house operation has no reasonable expectation of winning the cost competition, the cost comparison exercise may be waived by the Assistant Administrator for Management (**AA/M**). The waiver must include a written determination by the AA/M to this effect. Part IV of the Circular A-76 Supplement, "Cost Comparison Handbook," provides detailed instructions for a cost comparison.

## **\*104.6 Supplemental References - N/A**

## **\*104.7 Mandatory References**

OMB Circular A-76  
OMB Policy Letter 92-1

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